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**Sent:** 2/7/2019 4:40:11 PM  
**To:** Vena Jones [vena.l.jones@tn.gov]; Jimmy.R.Smith@tn.gov; Florance\_Bass@deq.state.ms.us; Joseph\_Paige@deq.state.ms.us; Fry, Joyce (EEC) [joyce.fry@ky.gov]; Heather Preston [PRESTOHS@dhec.sc.gov]; Charles Hightower [HIGHTOCW@dhec.sc.gov]; Rusty Wenerick [WENERIWR@dhec.sc.gov]; Heather.Mason@dep.state.fl.us; Timothy Rach [Timothy.Rach@dep.state.fl.us]; Karen Higgins [karen.higgins@ncdenr.gov] [karen.higgins@ncdenr.gov]; Amanda Decun [AmandaD@miccosukeetribe.com]; Mike Bolt [michbolt@nc-chokeee.com]; Whitney Sapienza [WhitneySapienza@semtribe.com]; jessica.lewis@choctaw.org; Amanda Mueller [amanda.mueller@ncdenr.gov]; Ian McMillan [Ian.McMillan@ncmail.net]; Stephen Wiedl [Stephen.Wiedl@dnr.state.ga.us] [Stephen.Wiedl@dnr.state.ga.us]; Bradley.Smith@dnr.state.ga.us; Jan.Mackinnon@dnr.ga.gov; cyndi.karoly@ncdenr.gov; Robert.D.Baker@tn.gov; Robert J. Wayne [Robert.J.Wayne@tn.gov]; Richard Hulcher [rfh@adem.state.al.us]; Scott Brown [jsb@adem.state.al.us]; Hooks, Falon [falon.hooks@adem.state.al.us]; Daughtry, Savannah M [savannah.daughtry@adem.alabama.gov]  
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**Subject:** FW: Army Corps to slash state permit review timescale

ALL:

FYI, See Message below from Jamie Higgins, of our NEPA program. This action could either lead to more Section 401 rubber-stamping, or to more Certification denials (or maybe both). It could also lead to more interest in state or tribal Section 404 assumption. What do you all think?

Diana Woods

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**From:** Higgins, Jamie  
**Sent:** Wednesday, February 6, 2019 3:16 PM  
**To:** Buskey, Traci P. <Buskey.Traci@epa.gov>; Clark, Maria <Clark.Maria@epa.gov>; Dean, Kenneth <Dean.William-Kenneth@epa.gov>; Gates, Kim <Gates.Kim@epa.gov>; Gissentanna, Larry <Gissentanna.Larry@epa.gov>; Higgins, Jamie <Higgins.Jamie@epa.gov>; Holliman, Daniel <Holliman.Daniel@epa.gov>; Kajumba, Ntale <Kajumba.Ntale@epa.gov>; Long, Larry <Long.Larry@epa.gov>; Santamaria, Rafael <Santamaria.Rafael@epa.gov>; Singh-White, Alya <Singh-White.Alya@epa.gov>; Somerville, Amanetta <Somerville.Amanetta@epa.gov>; White, Roshanna <White.Roshanna@epa.gov>; Militscher, Chris <Militscher.Chris@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>; Bowers, Todd <bowers.todd@epa.gov>; Woods, Diana <Woods.Diana@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Wetherington, Michele <Wetherington.Michele@epa.gov>  
**Subject:** Army Corps to slash state permit review times

Interesting article regarding the water quality certs.

<https://www.eenews.net/greenwire/2019/02/06/stories/1060119805>

The Army Corps of Engineers has directed the agency to slash state review of Section 404 permits under the Clean Water Act. Pxhere

The Trump administration has taken the first step to limit states' ability to block permits under the Clean Water Act.

In a December [memo](#), Army Corps of Engineers chief R.D. James directed the agency to write new guidance limiting the time states have to review permits for projects that would dredge or fill in wetlands and streams. Section 401 of the Clean Water Act gives states up to a year to review such projects unless the federal permitting agency sets a different timeline. If states don't approve or deny a project within that timeline, they waive their authority. James writes in the memo that while Army Corps regulations already require states to make their decisions within 60 days of receiving an application, "it has been standard practice" for Army Corps districts to give states an entire year to review permits.

"Such an approach is inconsistent with our existing Army regulations," James writes in the memo, which was first reported by *Politico*.

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Army Corps spokesman Doug Garman confirmed that the Army Corps has already written the guidance in question and that James' office is currently reviewing it.

"Once final approval occurs the guidance would be issued to ensure continued consistency and predictability within the [Army Corps of Engineers] Regulatory Program," he wrote in an email.

James' memo directs the Army Corps to write guidance solidifying the 60-day timeline and emphasizing that the clock begins when a state receives an application, not when a state decides an application is complete. While the Clean Water Act itself is vague about when the clock starts, states and agencies have both previously interpreted it to mean the countdown begins once a state deems a permit is complete.

Critics, including the pipeline and mining industries, have argued that schedule allows states to run out the clock to get more time for review, telling project developers at the last minute that their applications are incomplete and will be denied if states don't receive more information.

That would no longer be the case under the Army Corps guidance James wants written.

"District Engineers are reminded that under Section 401, the time period for a state's review begins upon receipt of the request by the applicant," the memo says.

While James said states should be allowed to request an extension, he emphasized it is up to the heads of Army Corps districts to decide if an extension is warranted and that "a certifying agency's request for additional time that is based on workload or resource issues or that they do not have enough information to proceed would not be valid reasons for consideration."

The memo is the first concrete example of an expected Trump administration push across agencies to limit state's Clean Water Act authority under Section 401.

The administration is considering executive action to boost proliferation of pipelines across the country, which could include reforming states' authority ([Greenwire](#), Jan. 24).

The Trump administration has already received strong pushback from state groups.

Last week, the Western Governors' Association wrote to Trump himself asking him to tell federal agencies "to reject any changes to agency rules, guidance or policy that may diminish, impair or subordinate states' well-established sovereign and statutory authorities to protect water quality within their boundaries."

The Army Corps is the federal permitting agency for projects that dredge or fill in wetlands and streams. States also have the authority to block water pollution permits issued by EPA and pipeline approvals issued by the Federal Energy Regulatory Commission.

EPA also has been looking into the issue for some time. Water chief David Ross told the Environmental Council of the States' annual meeting this fall that the agency is considering changing policies for how much time states have to make their certification decisions.

Emails released under Freedom of Information Act litigation by the Sierra Club also show the agency was keeping close tabs on Washington state's review of a coal export terminal from Millennium Bulk Terminals.

Days after the state's Shoreline Hearings Board upheld a 2017 denial of shoreline permits to the project last April, EPA Office of Water Deputy Assistant Administrator Lee Forsgren sent an email about the project to Ross and then-Deputy EPA Administrator Andrew Wheeler.

Most of the [email](#) is redacted, but the subject says the email is about "options on the Washington Water Quality Standards."

Jamie Higgins

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